

## **Proposed Amendments to the *Rules of Probate Procedure***

### **RULE 10.1: PRUDENT MANAGEMENT OF COSTS [Moved from 17.1]**

#### **A. IN A PROCEEDING BROUGHT PURSUANT TO TITLE 14:**

1. THE FIDUCIARY MUST PRUDENTLY MANAGE COSTS, PRESERVE THE ASSETS OF THE WARD OR PROTECTED PERSON FOR THE BENEFIT OF THE WARD OR PROTECTED PERSON, AND PROTECT AGAINST INCURRING ANY COSTS THAT EXCEED PROBABLE BENEFITS TO THE WARD, PROTECTED PERSON, DECEDENT'S ESTATE OR TRUST, EXCEPT AS OTHERWISE DIRECTED BY A GOVERNING INSTRUMENT OR COURT ORDER.
2. THE GUARDIAN AD LITEM, FIDUCIARY, FIDUCIARY'S ATTORNEY, ATTORNEY FOR THE WARD OR PROTECTED PERSON MUST TIMELY DISCLOSE TO THE COURT AND ALL PERSONS ENTITLED TO NOTICE IF THE PERSON HAS A REASONABLE BELIEF THAT PROJECTED COSTS OF COMPLYING WITH A COURT ORDER MAY EXCEED THE PROBABLE BENEFITS TO THE WARD, PROTECTED PERSON, DECEDENT'S ESTATE OR TRUST. IF APPROPRIATE, CONSISTENT WITH DUE PROCESS, THE COURT SHALL ENTER OR MODIFY THE ORDERS AS MAY PROTECT OR FURTHER THE BEST INTEREST OF THE WARD, PROTECTED PERSON, DECEDENT'S ESTATE OR TRUST AGAINST PROJECTED COSTS THAT EXCEED PROBABLE BENEFITS.
3. MARKET RATES FOR GOODS AND SERVICES ARE A PROPER, ONGOING CONSIDERATION FOR THE FIDUCIARY AND THE COURT DURING THE INITIAL COURT APPOINTMENT OF A FIDUCIARY OR ATTORNEY, A HEARING ON A BUDGET OBJECTION AND A REQUEST TO SUBSTITUTE A COURT-APPOINTED FIDUCIARY OR ATTORNEY. AT ANY STAGE OF THE PROCEEDINGS, THE COURT MAY ORDER THAT COMPETITIVE BIDS FOR GOODS OR SERVICES BE OBTAINED.

### **Rule 17. Petitions**

A. Filing. A petition shall be filed with the court in the following circumstances:

1. a statute or court rule requires that the requested relief be made by petition or sought in a formal proceeding;
2. the relief requested is such that an evidentiary hearing is required or the party seeking relief from the court desires an evidentiary hearing; or

3. substantive relief is requested.

B. Form of Petition. A petition shall contain any statements required by statute and any other statements necessary to support the requested relief. The statements shall be set forth in simple, concise, and direct paragraphs, each of which shall be separately numbered. The petition shall contain a short and plain statement of the relief being requested. Relief in the alternative or several different types of relief may be requested. The petition shall comply with the provisions of Rules 8 through 11, Arizona Rules of Civil Procedure, applicable to complaints and claims for relief.

C. Setting of Hearing, Notice of Hearing, and Proof of Notice. Upon the filing of a petition, the petitioner shall obtain a hearing date and time from the court. The petitioner shall serve all interested persons with a copy of the petition and notice of the hearing as required by statute and these rules and shall file with the court proof of such service at or before the hearing.

D. Objection to Petition. Any interested person who opposes the relief requested in the petition shall file with the court, at least three days before the hearing, either an objection to the petition or a motion authorized by Rule 12, Arizona Rules of Civil Procedure, or the person may appear at the hearing and orally object to the petition.

1. If a party files an objection to the petition or a motion under Rule 12 of the Arizona Rules of Civil Procedure fewer than three days before the hearing date, the objection or motion shall not be stricken solely for failure to comply with this rule. The objecting party shall attend the hearing and inform the court that a written objection or Rule 12 motion has been filed.

2. If the person objecting to the relief requested in the petition does not file an objection or motion with the court before the hearing date but instead orally objects to the petition at the hearing, the person objecting shall subsequently file a written objection or motion, as directed by the court or agreed to by the parties, setting forth the grounds for the person's objection.

3. A written objection to a petition shall comply with the provisions of Rules 8 through 11, Arizona Rules of Civil Procedure.

4. Unless otherwise ordered by the court, a person who files a written objection to a petition shall serve a copy of the objection upon all interested persons and shall file proof of such service with the court. Service of the objection may be made in any of the manners allowed by A.R.S. § 14-1401(A) for service of a notice of hearing.

E. Joinder. Any interested person who agrees with the relief requested in the petition may file a statement of such interest and may seek to join in the petition by filing a motion for joinder stating the interested person's agreement.

F. Reply. Unless otherwise directed by the court, the petitioner shall not file a reply in support of the petition.

G. Counterclaims, Cross-Claims, Third-Party Practice, and Amendment of Petitions and Objections Thereto. Rules 13 through 15 of the Arizona Rules of Civil Procedure shall apply to any counter-petition, cross-petition, or third-party petition filed and to the amendment of any petition, counter-petition, cross-petition, or third-party petition, and to any objection to any of these documents.

H. [MOVED TO 30(D) – STRIKE ALL OF RULE 17]

## **RULE 17.1: PRUDENT MANAGEMENT OF COSTS [Moved to 10.1]**

### **RULE 17.1 GOOD FAITH ESTIMATE [RENUMBERED FROM 17.2]**

A. A PETITION TO APPOINT A CONSERVATOR SHALL INCLUDE A GOOD FAITH ESTIMATE OF ALL PROJECTED MONTHLY COSTS IF THE INFORMATION CAN BE REASONABLY KNOWN OR PROJECTED AT THE TIME A PETITION IS FILED.

B. A GOOD FAITH ESTIMATE INCLUDES ALL PROJECTED MONTHLY COSTS THAT SHALL BE PAID BY A CONSERVATOR FROM THE PROTECTED PERSON'S ESTATE, EXCEPT MEDICAL COSTS AND TAXES, INCLUDING:

1. THE AVERAGE MONTHLY COST OF HOUSING AND CARE OF THE WARD.
2. THE AVERAGE MONTHLY COST OF DISCRETIONARY CARE SERVICES FOR THE WARD.
3. THE AVERAGE MONTHLY FIDUCIARY FEES AND COSTS PROJECTED TO BE INCURRED BY THE CONSERVATOR.
4. THE AMOUNT OF ATTORNEY FEES INCURRED OR PROJECTED TO BE INCURRED BY THE PROTECTED PERSON'S ESTATE THROUGH THE ISSUANCE OF A COURT ORDER APPOINTING A CONSERVATOR, AS REQUESTED IN THE PETITION.
5. THE AVERAGE MONTHLY ATTORNEY FEES AND EXPENSES EXPECTED TO BE INCURRED BY THE PROTECTED PERSON'S ESTATE UNTIL THE APPROVAL OF THE FIRST ACCOUNT.
6. THE PROJECTED COST TO PREPARE THE INITIAL INVENTORY AND APPRAISEMENT PURSUANT TO SECTION 14-5418.

7. THE AVERAGE MONTHLY COSTS OF ALL OTHER MISCELLANEOUS COSTS OR EXPENSES NOT OTHERWISE LISTED IN THE GOOD FAITH ESTIMATE, EXCLUDING MEDICAL COSTS AND TAXES, TOGETHER WITH AN EXPLANATION OF THE REQUESTED COST OR EXPENSE.

C. IF THE PETITIONER IS UNABLE TO PROVIDE ALL OR PART OF THE GOOD FAITH ESTIMATE AT THE TIME THE PETITION IS FILED, THE PETITIONER MUST STATE IN THE PETITION ALL EFFORTS MADE BY THE PETITIONER TO OBTAIN THE ESTIMATES, AND THE PETITIONER SHALL UPDATE THE GOOD FAITH ESTIMATE FIVE DAYS BEFORE THE HEARING ON THE PETITION IF FURTHER INFORMATION BECOMES KNOWN.

D. "DISCRETIONARY CARE" MEANS ALL GOODS AND SERVICES PROVIDED TO A WARD OR PROTECTED PERSON THAT ARE NOT ESSENTIAL FOR SURVIVAL BUT ARE DESIGNED TO IMPROVE OR PROLONG THE QUALITY AND ENJOYMENT OF LIFE FOR THE WARD OR PROTECTED PERSON. DISCRETIONARY CARE DOES NOT INCLUDE ITEMS SUCH AS HOUSING, UTILITIES, PERSONAL HYGIENE, MEDICAL OR DENTAL COSTS, MEDICATION, FOOD, TRANSPORTATION, INSURANCE AND TAXES.

#### **RULE 17.2 FINANCIAL ORDER [RENUMBERED FROM 17.3]**

A. FOLLOWING THE APPOINTMENT OF A CONSERVATOR, A CONSERVATOR SHALL INSTITUTE AND FOLLOW A BUDGET, AS SET FORTH IN RULE 30.1, UNLESS OTHERWISE ORDERED BY THE COURT, AND THE COURT MAY ENTER ONE OR MORE OF THE FOLLOWING ORDERS:

1. LIMIT EXPENDITURES FROM THE ESTATE OF THE PROTECTED PERSON AS THE COURT FINDS IS IN THE PROTECTED PERSON'S BEST INTEREST; OR,
2. REQUIRE THE CONSERVATOR TO PROCEED IN ANY OTHER LAWFUL MANNER THE COURT FINDS IS IN THE PROTECTED PERSON'S BEST INTEREST.

B. AFTER A CONSERVATOR IS APPOINTED, THE COURT MAY DISCHARGE THE PROTECTED PERSON'S ATTORNEY IF THE COURT FINDS THAT THE COST OF THE CONTINUED REPRESENTATION EXCEEDS THE PROBABLE BENEFIT TO THE PROTECTED PERSON. UNTIL DISCHARGED, THE PROTECTED PERSON'S ATTORNEY HAS A CONTINUING DUTY TO REVIEW THE CONSERVATOR'S INVENTORY, PROPOSED BUDGET AND ACCOUNT AND TO NOTIFY THE COURT OF ANY OBJECTIONS OR CONCERNS THE ATTORNEY IDENTIFIES WITH RESPECT TO THE CONSERVATOR'S INVENTORY, PROPOSED BUDGET AND ACCOUNT.

#### **RULE 17.4: SUSTAINABILITY OF CONSERVATORSHIP [Moved to 30.1]**

**RULE 18 (C): REPETITIVE FILINGS; MOTIONS FOR SUMMARY DISPOSITION; REPETITIVE FILINGS**

1. IF AN INTERESTED PERSON FILES A REPETITIVE MOTION OR PETITION, ANY OTHER INTERESTED PERSON MAY FILE A MOTION REQUESTING THAT THE COURT SUMMARILY DENY THE REPETITIVE MOTION OR PETITION PURSUANT TO A.R.S. § 14-1109.

2. A MOTION FOR SUMMARY DISPOSITION FILED PURSUANT TO THIS RULE SHALL BE FILED AS FOLLOWS:

A. IF THE MOTION FOR SUMMARY DISPOSITION ASKS THE COURT TO SUMMARILY DENY A REPETITIVE MOTION, THE MOTION FOR SUMMARY DISPOSITION SHALL BE FILED BY NO LATER THAN THE DATE BY WHICH A RESPONSE TO THE REPETITIVE MOTION MUST BE FILED PURSUANT TO RULE 7.1(A), ARIZONA RULES OF CIVIL PROCEDURE.

B. IF THE MOTION FOR SUMMARY DISPOSITION ASKS THE COURT TO SUMMARILY DENY A REPETITIVE PETITION, THE MOTION FOR SUMMARY DISPOSITION SHALL BE FILED BY NO LATER THAN THREE DAYS BEFORE THE INITIAL HEARING ON THE REPETITIVE PETITION.

3. A MOTION FOR SUMMARY DISPOSITION FILED PURSUANT TO THIS RULE SHALL BE NO LONGER THAN TWO PAGES IN LENGTH, EXCLUSIVE OF THE MAILING CERTIFICATE, AND SHALL CONCISELY PROVIDE THE COURT WITH THE FOLLOWING INFORMATION: (I) THE TITLE OF THE REPETITIVE MOTION OR PETITION AND THE DATE IT WAS FILED AND (II) THE TITLE OF THE PREVIOUSLY FILED MOTION OR PETITION THAT REQUESTED THE SAME OR SUBSTANTIALLY SIMILAR RELIEF TO THE REPETITIVE MOTION OR PETITION AND THE DATE THE PREVIOUSLY FILED MOTION OR PETITION WAS FILED. UNLESS THE COURT DIRECTS OTHERWISE, NO RESPONSE SHALL BE FILED TO THE MOTION FOR SUMMARY DISPOSITION NOR SHALL ANY ORAL ARGUMENT BE HELD ON THE MOTION FOR SUMMARY DISPOSITION.

4. THE TIMELY FILING OF A MOTION FOR SUMMARY DISPOSITION PURSUANT TO THIS RULE SHALL EXTEND THE TIME FOR FILING A RESPONSE OR OBJECTION TO THE REPETITIVE MOTION OR PETITION. UNLESS THE COURT ORDERS OTHERWISE,

A. IF THE COURT DENIES A MOTION FOR SUMMARY DISPOSITION THAT RELATES TO AN ALLEGEDLY REPETITIVE MOTION, THE TIME SET FORTH IN RULE 7.1(A), ARIZONA RULES OF CIVIL PROCEDURE, FOR RESPONDING TO THE ALLEGEDLY REPETITIVE MOTION SHALL BE COMPUTED FROM THE DATE THE COURT SERVES NOTICE OF SUCH DENIAL.

B. IF THE COURT DENIES A MOTION FOR SUMMARY DISPOSITION THAT RELATES TO AN ALLEGEDLY REPETITIVE PETITION, THE COURT SHALL

SPECIFIC A TIME BY WHICH ANY OBJECTIONS TO THE ALLEGEDLY REPETITIVE PETITION SHALL BE FILED.

5. FOR PURPOSES OF THIS RULE, "REPETITIVE MOTION" MEANS A MOTION OR PETITION THAT REQUESTS THE SAME OR SUBSTANTIALLY SIMILAR RELIEF TO THE RELIEF REQUESTED IN ANOTHER MOTION OR PETITION FILED BY THE SAME INTERESTED PERSON DURING THE PRECEDING 12 MONTHS AND THAT DOES NOT DESCRIBE IN DETAIL A CHANGE IN FACT OR CIRCUMSTANCE THAT SUPPORTS THE REQUEST RELIEF. [Jay's proposal in lieu of 29.3]

### **Rule 19. Appointment of Attorney, Medical Professional, and Investigator**

A. A request for the appointment of an attorney, medical professional, and investigator may be included in the petition for the appointment of a guardian or conservator and need not be made by separate motion. A separate form of order for the appointment of an attorney, a medical professional, and an investigator shall be submitted to the court within three days after the request is made.

B. ABSENT GOOD CAUSE, A PARTY WHO SEEKS THE APPOINTMENT OF A GUARDIAN OR CONSERVATOR SHALL NOT NOMINATE A SPECIFIC ATTORNEY TO REPRESENT THE SUBJECT PERSON UNLESS THE ATTORNEY HAS AN EXISTING OR PRIOR ATTORNEY-CLIENT RELATIONSHIP WITH THE SUBJECT PERSON. If a party ~~who seeks the appointment of a guardian or conservator~~ nominates a specific attorney to represent the ~~SUBJECT PERSON alleged incapacitated person or the person alleged to be in need of protection~~, the party shall, in the petition for appointment of guardian or conservator, describe the attorney's prior relationship, if any, with the petitioner and the ~~SUBJECT PERSON alleged incapacitated person or the person alleged to be in need of protection~~.

C. UNLESS OTHERWISE ORDERED BY THE COURT, AN ATTORNEY SHALL NOT BE APPOINTED, ACCEPT AN APPOINTMENT, OR REMAIN APPOINTED AS THE ATTORNEY OR GUARDIAN AD LITEM FOR THE SUBJECT PERSON IF THE ATTORNEY HAS AN EXISTING ATTORNEY-CLIENT RELATIONSHIP WITH THE NOMINATED OR APPOINTED FIDUCIARY.

~~D.~~ If a party who seeks the appointment of a guardian or conservator nominates a specific medical professional to evaluate the alleged incapacitated person or the person alleged to be in need of protection, the party shall, in the petition for appointment of guardian or conservator, describe the medical professional's prior relationship, if any, with the petitioner and the alleged incapacitated person or the person alleged to be in need of protection.

E. AN INVESTIGATOR APPOINTED BY THE COURT, AND ANY PERSON OR ENTITY CLOSELY RELATED TO THE INVESTIGATOR, SHALL NOT BE APPOINTED AS A FIDUCIARY, ATTORNEY OR GUARDIAN AD LITEM IN THE SAME CASE OR FOR THE SAME PERSON WHO WAS THE SUBJECT OF THE PRIOR INVESTIGATION UNLESS OTHERWISE ORDERED BY THE COURT FOR GOOD CAUSE. FOR THE PURPOSES OF THIS SUBSECTION, "CLOSELY RELATED" INCLUDES A SPOUSE, CHILD, PARENT, SIBLING, GRANDPARENT, AUNT, UNCLE OR COUSIN OF THE INVESTIGATOR AND ANY BUSINESS, PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY, TRUST OR OTHER ENTITY THAT THE INVESTIGATOR OR A CLOSELY RELATED PERSON HAS A FINANCIAL INTEREST IN, IS EMPLOYED BY OR RECEIVES COMPENSATION OR FINANCIAL BENEFIT FROM. THIS SUBSECTION DOES NOT APPLY TO A PUBLIC FIDUCIARY. [strike???

F.~~D.~~ Noncompliance with this rule may be cause for continuing the hearing on the petition for appointment of guardian or conservator to such time as the judicial officer directs.

## **Rule 25. Order to Fiduciary**

A. Order to Personal Representative. Letters of personal representative shall not be issued until the proposed personal representative has signed and the court has entered an order to the personal representative. The order shall be substantially similar to Form 1 in the Appendix. This requirement shall not apply to the appointment of a special administrator.

B. Order to Guardian. Letters of guardian shall not be issued until the proposed guardian has signed and the court has entered an order to the guardian. The order shall be substantially similar to Form 2 in the Appendix.

C. Order to Conservator. Letters of conservator shall not be issued until the proposed conservator has signed and the court has entered an order to the conservator. The order shall be substantially similar to Form 3 in the Appendix.

D. Order to Guardian and Conservator. If the same person is being appointed as both guardian and conservator, the requirements of sections B and C of this rule may be satisfied by the person signing, and the court entering, an order to the guardian and conservator. The order shall be substantially similar to Form 4 in the Appendix.

E. UNLESS OTHERWISE ORDERED BY THE COURT, FOLLOWING A WRITTEN REQUEST NOT MORE THAN ONCE EVERY THIRTY DAYS, A CONSERVATOR SHALL ALLOW A PERSON WHO IS ENTITLED TO NOTICE OF THE CONSERVATOR'S ANNUAL ACCOUNT PURSUANT TO SECTION 14-5419, SUBSECTION C, TO VIEW OR RECEIVE A COPY OF THE CONSERVATOR'S BILLING STATEMENTS, THE BILLING STATEMENTS OF THE CONSERVATOR'S

ATTORNEY, AND/OR OTHER FINANCIAL RECORDS OF THE PROTECTED PERSON; THE CONSERVATOR MAY REDACT CONFIDENTIAL DATA, SUCH AS SOCIAL SECURITY AND ACCOUNT NUMBERS . THE CONSERVATOR SHALL COMPLY AS SOON AS PRACTICABLE BUT NO LATER THAN THIRTY DAYS AFTER RECEIVING THE WRITTEN REQUEST. THE REQUESTING PERSON MUST PAY REASONABLE COPYING COSTS AND SHALL NOT RELEASE THE RECORDS TO ANYONE OTHER THAN THE PERSON'S OWN ATTORNEY. COMPLIANCE WITH THIS REQUEST SHALL BE BILLABLE TIME FOR THE CONSERVATOR. [strike???

## **Rule 29. Arbitration ALTERNATIVE DISPUTE RESOLUTION**

~~Unless the parties to a contested matter agree otherwise, Rules 72 through 76, Arizona Rules of Civil Procedure, pertaining to compulsory arbitration, shall not apply.~~ FOLLOWING THE INITIAL APPOINTMENT OF A FIDUCIARY, THE COURT MAY ORDER ALTERNATIVE DISPUTE RESOLUTION, INCLUDING COMPULSORY ARBITRATION PURSUANT TO ARIZONA RULES OF CIVIL PROCEDURE 72 THROUGH 76, AND THE PARTIES SHALL PARTICIPATE IN GOOD FAITH. [strike???

### **RULE 29.1: WRITTEN FINDINGS ON APPOINTMENT**

FOLLOWING A CONTESTED HEARING ON THE APPOINTMENT OF A GUARDIAN OR CONSERVATOR, THE COURT SHALL MAKE A RECORD OF ITS REASONS FOR PASSING OVER A PERSON WITH HIGHER PRIORITY AND APPOINTING A PERSON WITH LOWER PRIORITY IF FINDINGS ARE REQUESTED IN WRITING WITHIN TEN DAYS AFTER THE APPOINTMENT. [STRIKE???

### **Rule 29.2: REMEDIES FOR UNREASONABLE CONDUCT; DEFINITIONS**

A. IF THE COURT FINDS THAT A DECEDENT'S ESTATE OR TRUST HAS INCURRED PROFESSIONAL FEES OR EXPENSES AS A RESULT OF UNREASONABLE CONDUCT, THE COURT SHALL ORDER THE PERSON WHO ENGAGED IN THE CONDUCT OR THE PERSON'S ATTORNEY, OR BOTH, TO PAY THE DECEDENT'S ESTATE OR TRUST FOR SOME OR ALL OF THE FEES AND EXPENSES AS THE COURT DEEMS JUST UNDER THE CIRCUMSTANCES.

B. IN A GUARDIANSHIP OR CONSERVATORSHIP CASE, IF THE COURT FINDS THAT A WARD OR PROTECTED PERSON HAS INCURRED PROFESSIONAL FEES OR EXPENSES AS A RESULT OF UNREASONABLE CONDUCT, THE COURT SHALL ORDER THE PERSON WHO ENGAGED IN THE CONDUCT OR THE PERSON'S ATTORNEY, OR BOTH, TO PAY THE WARD OR PROTECTED PERSON FOR SOME OR ALL OF THE FEES AND EXPENSES AS THE COURT DEEMS JUST UNDER THE CIRCUMSTANCES. IF THE COURT FINDS THE PERSON ENGAGED



IN VEXATIOUS CONDUCT, THE COURT MAY ALSO DO EITHER OR BOTH OF THE FOLLOWING:

1. ORDER THAT THE PERSON IS NO LONGER ENTITLED TO NOTICE OF, AND MAY NOT PARTICIPATE AS A PARTY IN, ANY FUTURE PROCEEDINGS CONCERNING THE WARD OR PROTECTED PERSON BROUGHT PURSUANT TO THIS TITLE.

2. ORDER THAT THE WARD'S OR PROTECTED PERSON'S FIDUCIARY, FIDUCIARY'S ATTORNEY, COURT-APPOINTED ATTORNEY OR GUARDIAN AD LITEM DOES NOT HAVE A DUTY TO RESPOND TO FUTURE REQUESTS MADE BY THE PERSON FOR INFORMATION CONCERNING THE WARD OR PROTECTED PERSON OR RESPOND TO FUTURE COURT FILINGS MADE BY THE PERSON, UNLESS REQUIRED BY SUBSEQUENT COURT ORDER.

C. BEFORE MAKING A REQUEST FOR A REMEDY PURSUANT TO THIS SECTION, A PARTY MUST NOTIFY THE OFFENDING PARTY IN WRITING OF THE PARTY'S INTENT TO SEEK THE REMEDY IF THE OFFENDING CONDUCT IS NOT TERMINATED WITHIN A REASONABLE TIME.

D. THE REMEDIES PERMITTED PURSUANT TO THIS SECTION ARE IN ADDITION TO ANY OTHER CIVIL REMEDY OR ANY OTHER PROVISION OF LAW. THE REMEDIES PERMITTED PURSUANT TO THIS SECTION MAY BE INVOKED TO MITIGATE THE FINANCIAL BURDEN ON A WARD, PROTECTED PERSON, DECEDENT'S ESTATE OR TRUST INCURRED AS A RESULT OF UNJUSTIFIED COURT PROCEEDINGS OR UNREASONABLE OR EXCESSIVE DEMANDS MADE ON A FIDUCIARY, FIDUCIARY'S ATTORNEY, COURT-APPOINTED ATTORNEY OR REPRESENTATIVE.

E. FOR THE PURPOSES OF THIS SECTION:

1. "COURT-APPOINTED ATTORNEY" MEANS AN ATTORNEY APPOINTED PURSUANT TO SECTION 14-5303, SUBSECTION C, SECTION 14-5310, SUBSECTION C, SECTION 14-5401.01, SUBSECTION C OR SECTION 14-5407, SUBSECTION B.

2. "FIDUCIARY" MEANS AN AGENT UNDER A DURABLE POWER OF ATTORNEY, AN AGENT UNDER A HEALTH CARE POWER OF ATTORNEY, A GUARDIAN, A CONSERVATOR, A PERSONAL REPRESENTATIVE, A TRUSTEE OR A GUARDIAN AD LITEM.

3. "PERSON WHO ENGAGED IN THE CONDUCT" INCLUDES BUT IS NOT LIMITED TO, A FIDUCIARY, AN ATTORNEY OR A GUARDIAN AD LITEM.

4. "PROFESSIONAL" MEANS AN ACCOUNTANT, AN ATTORNEY, A FIDUCIARY, A PHYSICIAN, A PSYCHOLOGIST, A REGISTERED NURSE, A GUARDIAN AD LITEM OR AN EXPERT WITNESS.

5. "PROFESSIONAL FEES OR EXPENSES" INCLUDES THE FIDUCIARY'S FEES AND EXPENSES AND THE FIDUCIARY'S ATTORNEY FEES AND EXPENSES, AS WELL AS THE FEES AND EXPENSES OF ANY OTHER PROFESSIONALS HIRED BY THE FIDUCIARY OR THE FIDUCIARY'S ATTORNEY.

6. "VEXATIOUS CONDUCT":

(a) INCLUDES:

(i) LITIGATION SOLELY OR PRIMARILY FOR THE PURPOSE OF HARASSMENT.

(ii) LITIGATION SOLELY OR PRIMARILY TO FURTHER THE PERSON'S OWN INTERESTS RATHER THAN THE INTERESTS OF THE WARD OR PROTECTED PERSON.

(iii) UNREASONABLY EXPANDING OR DELAYING COURT PROCEEDINGS.

(iv) COURT ACTIONS BROUGHT OR DEFENDED WITHOUT SUBSTANTIAL JUSTIFICATION.

(v) ENGAGING IN ABUSE OF DISCOVERY.

(vi) A PATTERN OF MAKING UNREASONABLE OR EXCESSIVE REQUESTS FOR INFORMATION FROM A WARD'S OR A PROTECTED PERSON'S FIDUCIARY, COURT-APPOINTED ATTORNEY OR GUARDIAN AD LITEM.

(b) DOES NOT INCLUDE:

(i) A PROCEEDING BROUGHT BY OR ON BEHALF OF THE WARD OR PROTECTED PERSON AGAINST ANOTHER PERSON WHEN THE OTHER PERSON DEFENDS THE CLAIM IN GOOD FAITH.

(ii) A PROCEEDING BROUGHT IN GOOD FAITH BY A PERSON AGAINST A WARD OR PROTECTED PERSON TO ESTABLISH A CLAIM AGAINST THE WARD OR PROTECTED PERSON.

(iii) A PROCEEDING BROUGHT IN GOOD FAITH BY OR AGAINST THE WARD'S OR THE PROTECTED PERSON'S FIDUCIARY OR COURT-APPOINTED ATTORNEY, INCLUDING A PROCEEDING TO ESTABLISH THE FIDUCIARY'S OR THE COURT-APPOINTED ATTORNEY'S LIABILITY TO THE WARD OR PROTECTED PERSON OR ENTITLEMENT TO COMPENSATION. [strike??]

### **RULE 29.3: REPETITIVE FILINGS; SUMMARY DENIAL**

IF AN INTERESTED PERSON FILES A MOTION OR PETITION THAT REQUESTS THE SAME OR SUBSTANTIALLY SIMILAR RELIEF TO THE RELIEF REQUESTED

IN ANOTHER MOTION OR PETITION FILED BY THE SAME INTERESTED PERSON WITHIN THE PRECEDING 12 MONTHS AND IF THE LATER FILED MOTION OR PETITION FAILS TO DESCRIBE IN DETAIL A CHANGE IN FACT OR CIRCUMSTANCE THAT SUPPORTS THE REQUESTED RELIEF, THE COURT MAY SUMMARILY DENY THE MOTION OR PETITION WITHOUT A RESPONSE OR OBJECTION BEING FILED AND WITHOUT A HEARING OR ORAL ARGUMENT BEING SET. [strike in favor of Jay's 18(c)???

### **Rule 30. Guardianships/Conservatorships-Specific Procedures**

#### **A. Inventories.**

1. Unless otherwise ordered by the court, the conservator shall file the inventory of the protected person's estate, **INCLUDING ASSETS AND LIABILITIES**, within 90 days after the conservator's letters of conservator, whether temporary or permanent, are first issued. The inventory shall list all property owned by the protected person as of the date the conservator's letters of conservator, whether temporary or permanent, were first issued, and shall provide the values of such assets **AND AMOUNT OF SUCH LIABILITIES** as of the date of the conservator's first appointment.

2. If the conservator is unable to file the inventory within 90 days after the conservator's letters of conservator, whether temporary or permanent, are first issued, the conservator shall, before the deadline, file a motion that requests additional time to file the inventory. Such motion shall state why additional time is required and how much additional time is required to file the inventory.

3. If, after filing the inventory but before filing the conservator's first **ACCOUNT** ~~accounting~~, the conservator discovers an additional asset or discovers that the value of an asset on the inventory, whether appraised or not, **OR DISCOVERS AN ADDITIONAL LIABILITY OR DISCOVERS THAT THE AMOUNT OF A LIABILITY ON THE INVENTORY**, [keep or strike???] is erroneous or misleading, the conservator shall file an amended inventory. If the conservator files an amended inventory because the conservator has discovered an additional asset and if the additional asset is not already subject to a court-ordered restriction, the conservator shall, with the amended inventory, file a petition requesting the court to either increase the amount of the conservator's bond or enter an order restricting the sale, conveyance, or encumbrance of the additional asset.

4. Unless permitted by the court, after a conservator has filed the conservator's first **ACCOUNT** ~~accounting~~ with the court, the conservator shall not amend the inventory. If the conservator discovers any assets after the filing of the conservator's first **ACCOUNT** ~~accounting~~ or if the conservator discovers that the value of an asset listed on the inventory is erroneous or

misleading, the conservator shall make the appropriate adjustments on the conservator's subsequent ACCOUNTS accountings.

B. CONSERVATOR'S ACCOUNTS Accountings.

1. Unless otherwise ordered by the court, the conservator's first ACCOUNT accounting shall reflect all activity relating to the conservatorship estate from the date the conservator's letters were first issued through and including the last day of the ninth month after the date the conservator's permanent letters were issued and shall be filed with the court on or before the anniversary date of the issuance of the conservator's permanent letters. For each bank or securities account listed on the ending balance schedule of the ACCOUNT accounting, the conservator shall attach to the ACCOUNT accounting a copy of the monthly statement that corresponds to the ending balance of such account as reflected on the ACCOUNT accounting.

2. Unless otherwise ordered by the court, all subsequent ACCOUNTS accountings shall reflect all activity relating to the conservatorship estate from the ending date of the most recent previously filed ACCOUNT accounting through and including the last date of the twelfth month thereafter, and shall be filed with the court on or before the anniversary date of the issuance of the conservator's permanent letters. For each bank or securities account listed on the ending balance schedule of the ACCOUNT accounting, the conservator shall attach to the ACCOUNT accounting a copy of the monthly statement that corresponds to the ending balance of such account as reflected on the ACCOUNT accounting.

3. UNLESS OTHERWISE ORDERED BY THE COURT, THE CONSERVATOR'S ACCOUNT SHALL BE FILED IN A FORMAT AS SET FORTH IN FORM 5. THE BUDGET COLUMNS MAY BE LEFT BLANK IF A BUDGET IS NOT REQUIRED.

~~4.3.~~ Unless otherwise ordered by the court and except as provided in A.R.S. § 14-5419(F), a conservator shall file a final ACCOUNT accounting for a deceased protected person within 90 days after the date of the protected person's death.

~~5.4.~~ If the conservator is unable to file an ACCOUNT accounting within the time set forth in this rule, the conservator shall, before the deadline, file a motion that requests additional time to file the ACCOUNT accounting. The motion shall, at a minimum, state why additional time is required and how much additional time is required to file the ACCOUNT accounting.

~~6.5.~~ For purposes of this rule, if the conservator's appointment initially was temporary, "the date the conservator's letters were first issued" shall mean the date the conservator's temporary letters were issued; otherwise, "the date the conservator's letters were first issued" shall mean the date the conservator's permanent letters were issued.

### C. Annual Guardian Reports

1. Unless otherwise ordered by the court, the guardian's first annual report shall cover the time from the date the guardian's letters were first issued through and including the last day of the ninth month after the date the guardian's permanent letters were issued. The report shall be filed with the court on or before the anniversary date of the issuance of the guardian's permanent letters.
2. Unless otherwise ordered by the court, all subsequent annual reports of guardian shall cover the time from the ending date of the most recent previously filed annual report of guardian through and including the last date of the twelfth month thereafter. The report shall be filed with the court on or before the anniversary date of the issuance of the guardian's permanent letters.
3. If the guardian is unable to file an annual report of guardian within the time set forth in this rule, the guardian shall, before the deadline, file a motion that requests additional time to file the report. The motion shall state why additional time is required and how much additional time is required to file the report.
4. For purposes of this rule, if the guardian's appointment initially was temporary, "the date the guardian's letters were first issued" shall mean the date the guardian's temporary letters were issued; otherwise, "the date the guardian's letters were first issued" shall mean the date the guardian's permanent letters were issued.

**D. A PERSON OR ENTITY WHO INTENDS TO BE COMPENSATED BY THE ESTATE OF A WARD OR PROTECTED PERSON, EXCEPT A COURT INVESTIGATOR OR MEDICAL PROFESSIONAL, SHALL GIVE WRITTEN NOTICE OF THE BASIS OF ANY COMPENSATION WHEN THE PERSON FIRST APPEARS IN THE PROCEEDING OR PRIOR TO THE ACCRUAL OF ANY FEES, WHICHEVER IS LATER. THIS WRITTEN NOTICE SHALL BE FILED WITH THE COURT AND PROVIDE A GENERAL EXPLANATION OF THE COMPENSATION ARRANGEMENT AND HOW THE COMPENSATION WILL BE COMPUTED. UNLESS OTHERWISE REQUIRED BY LAW OR REGULATION, IF DURING THE PENDENCY OF THE ACTION THE BASIS FOR COMPENSATION CHANGES, THE PERSON MUST PROVIDE NOTICE OF THE CHANGE IN THE SAME MANNER, NOT LESS THAN THIRTY DAYS BEFORE A CHANGE BECOMES EFFECTIVE. A COPY OF THE NOTICE REQUIRED BY THIS SUBSECTION SHALL BE PROVIDED TO ALL PERSONS WHO ARE ENTITLED TO RECEIVE THE CONSERVATOR'S ACCOUNT. [MOVED FROM 17(H)]**

**RULE 30.1: SUSTAINABILITY OF CONSERVATORSHIP [Moved from 17.4]**



### **RULE 30.1 CONSERVATORSHIP BUDGET**

- A. UNLESS OTHERWISE ORDERED BY THE COURT, THE CONSERVATOR SHALL FILE A BUDGET NOT LATER THAN THE DATE THE INVENTORY IS DUE AND WITH THE CONSERVATOR'S ACCOUNT THEREAFTER, FOLLOWING CONSULTATION WITH ANY ATTORNEY OR GUARDIAN AD LITEM FOR THE PROTECTED PERSON. THE FIRST BUDGET SHALL COVER THE DATE OF THE CONSERVATOR'S INITIAL APPOINTMENT THROUGH AND INCLUDING THE END DATE OF THE CONSERVATOR'S FIRST ACCOUNT.
- B. THE PROPOSED BUDGET REQUIRED BY THIS SECTION MUST BE FILED IN A FORMAT AS SET FORTH IN FORM 5.
- C. THE CONSERVATOR MUST PROVIDE A COPY OF THE PROPOSED BUDGET TO ALL PERSONS ENTITLED TO NOTICE OF THE CONSERVATOR'S ACCOUNTS PURSUANT TO SECTION 14-5419(C).
- D. THE CONSERVATOR SHALL FILE A PROPOSED AMENDMENT TO THE BUDGET AND PROVIDE NOTICE IN THE SAME MANNER AS THE INITIAL PROPOSED BUDGET WITHIN THIRTY DAYS AFTER REASONABLY PROJECTING THAT THE EXPENDITURES FOR ANY SPECIFIC CATEGORY WILL EXCEED THE APPROVED BUDGET BY MORE THAN TEN PER CENT OR TWO THOUSAND DOLLARS, WHICHEVER IS GREATER, UNLESS A DIFFERENT THRESHOLD FOR AMENDMENT IS PRESCRIBED BY THE COURT.
- E. AN INTERESTED PERSON MAY FILE A WRITTEN OBJECTION TO THE PROPOSED BUDGET OR AMENDMENT WITHIN FOURTEEN DAYS AFTER THE FILING DATE OF THE PROPOSED BUDGET OR AMENDMENT. ON THE FILING OF A WRITTEN OBJECTION, THE COURT MAY OVERRULE ALL OR PART OF THE OBJECTION, ORDER A REPLY BY THE CONSERVATOR OR SET A HEARING ON THE OBJECTION. THE COURT MAY ALSO SET A HEARING IN THE ABSENCE OF AN OBJECTION. THE COURT SHALL APPROVE, DISAPPROVE OR MODIFY THE PROPOSED BUDGET OR PROPOSED AMENDMENT TO SERVE THE PROTECTED PERSON'S BEST INTEREST. AT A HEARING, THE CONSERVATOR HAS THE BURDEN TO PROVE THAT A CONTESTED BUDGET ITEM IS REASONABLE, NECESSARY AND IN THE BEST INTEREST OF THE PROTECTED PERSON.
- F. THE COURT MAY ORDER THAT A PROPOSED BUDGET IS APPROVED IN THE ABSENCE OF AN OBJECTION.

### **Rule 33. Compensation for Fiduciaries and Attorney's Fees**

- A. Unless otherwise ordered by the court, a petition that requests approval of compensation for a personal representative, trustee, guardian, conservator, guardian ad litem, attorney representing such fiduciary, or an attorney

representing the subject person in a guardianship or conservatorship proceeding for services rendered in proceedings under A.R.S. Title 14 shall be accompanied by a statement that includes the following information:

1. If compensation is requested based on hourly rates, a detailed statement of the services provided, including the tasks performed, the date each task was performed, the time expended in performing each task, the name and position of the person who performed each task, and the hourly rate charged for such services;
2. An itemization of costs for which reimbursement is sought that identifies the cost item, the date the cost was incurred, the purpose for which the expenditure was made, and the amount of reimbursement requested, or, if reimbursement of costs is based on some other method, an explanation of the method being used for reimbursement of costs; and
3. If compensation is not based on hourly rates, an explanation of the fee arrangement and computation of the fee for which approval is sought.

B. Copies of all petitions for compensation and fee statements shall be provided to or served on each party and person who has appeared or requested notice in the case. Proof of such service shall be filed with the court.

C. If a petition for compensation or fees is contested, the objecting party shall set forth all specific objections in writing, and a copy of such written objections shall be given to or served on each party and person who has appeared or requested notice in the case. Proof of service or delivery of such notice shall be filed with the court.

D. When an attorney or fiduciary fee statement accompanies an annual accounting, the fee statement shall match the charges reported in the annual accounting or a reconciliation of the fee statement to the accounting shall be provided by the fiduciary.

E. **WHEN DETERMINING REASONABLE COMPENSATION, The superior court SHALL FOLLOW THE STATEWIDE FEE GUIDELINES SET FORTH IN APPENDIX A TO THESE RULES** ~~may adopt fee guidelines designating compensation rates that may be used in determining the reasonableness of fees payable to licensed fiduciaries in cases under A.R.S. Title 14.~~

F. Unless ordered by the court, neither a personal representative nor a personal representative's attorney is required to file a petition for approval of such person's fees.

**G. IN A GUARDIANSHIP, CONSERVATORSHIP OR PROTECTIVE PROCEEDING, UNLESS A LATER DEADLINE FOR COMPENSATION IS ESTABLISHED BY STATUTE:**



1. COMPENSATION PAYABLE TO ATTORNEYS OR GUARDIANS AD LITEM AGAINST A WARD OR PROTECTED PERSON'S ESTATE IS WAIVED IF NOT SUBMITTED TO THE FIDUCIARY IN WRITING WITHIN FOUR MONTHS AFTER EITHER RENDERING THE SERVICE, INCURRING THE COST, INITIAL APPOINTMENT OF THE FIDUCIARY, OR THE EFFECTIVE DATE OF THIS RULE, WHICHEVER IS LATER. A REQUEST FOR COMPENSATION IS DEEMED SUBMITTED ON DELIVERY, MAILING OR ELECTRONIC TRANSMISSION TO THE FIDUCIARY. A SUBSEQUENT APPOINTMENT OF A SUBSTITUTE FIDUCIARY DOES NOT RENEW THE PERIOD TO REQUEST COMPENSATION. THIS SECTION SHALL NOT APPLY TO A CONTINGENCY FEE AGREEMENT.

2. ACCRUED BUT UNPAID COMPENSATION INCURRED DURING A REPORTING PERIOD BY A GUARDIAN IS WAIVED IF NOT DISCLOSED IN THE GUARDIAN'S REPORT OR IN AN AMENDED REPORT FILED WITHIN THREE MONTHS AFTER THE DUE DATE OF THE REPORT. AN AMENDMENT OF THE GUARDIAN'S REPORT DOES NOT RENEW THE TIME TO DISCLOSE ANY ACCRUED BUT UNPAID COMPENSATION. A REQUEST FOR ANY ACCRUED BUT UNPAID COMPENSATION THAT WAS INCURRED BEFORE THE EFFECTIVE DATE OF THIS RULE MUST BE DISCLOSED NOT LATER THAN THE DUE DATE FOR THE NEXT GUARDIAN'S REPORT AFTER THE EFFECTIVE DATE OF THIS RULE OR ANY ACCRUED BUT UNPAID COMPENSATION IS WAIVED.

3. ACCRUED BUT UNPAID COMPENSATION INCURRED DURING A REPORTING PERIOD BY A CONSERVATOR IS WAIVED IF NOT DISCLOSED IN THE CONSERVATOR'S ACCOUNT, OR IN AN AMENDED ACCOUNT FILED WITHIN THREE MONTHS AFTER THE DUE DATE OF THE ACCOUNT. AN AMENDMENT OF THE CONSERVATOR'S ACCOUNT DOES NOT RENEW THE TIME TO DISCLOSE ANY ACCRUED BUT UNPAID COMPENSATION. A FIDUCIARY WHO IS BOTH A GUARDIAN AND CONSERVATOR FOR A SUBJECT PERSON MUST DISCLOSE ANY ACCRUED BUT UNPAID COMPENSATION AS REQUIRED BY A CONSERVATOR. A REQUEST FOR ANY ACCRUED BUT UNPAID COMPENSATION THAT WAS INCURRED BEFORE THE EFFECTIVE DATE OF THIS RULE MUST BE DISCLOSED NOT LATER THAN THE DUE DATE FOR THE NEXT CONSERVATOR'S ACCOUNT AFTER THE EFFECTIVE DATE OF THIS RULE OR ANY ACCRUED BUT UNPAID COMPENSATION IS WAIVED.  
[STRIKE???

**Form 5. CONSERVATOR'S ACCOUNT WITH PROPOSED BUDGET**

**Name of Person Filing Document:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip Code:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Attorney Bar Number (if applicable):** \_\_\_\_\_

**Licensed Fiduciary Number (if applicable):** \_\_\_\_\_

**Representing Self or Attorney for:** \_\_\_\_\_

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF «COUNTY»

IN THE MATTER OF THE  
CONSERVATORSHIP FOR

«Protected Person's Name»,

☐ a Minor

☐ an Adult

NO. «CaseNo.»

CONSERVATOR'S ACCOUNT

☐ WITH PROPOSED BUDGET

(Assigned to the Honorable  
«Judicial Officer»)

REQUIRED ATTACHMENTS, which are to be attached in the following order:

☐ SCHEDULE 1: Statement of Income and Expenditures

☐ SCHEDULE 2: Updated Inventory & Reconciliation

☐ RECENT BANK STATEMENT for each bank account.

☐ Supporting Detail required for SCHEDULE 1

☐ Supporting Detail required for SCHEDULE 2

☐ TRANSACTION LOG, detailing all financial transaction during the reporting period, reported by category.

1. Identify any assets that will be liquidated prior to the next Conservator's Account:

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**Form 5. Continued**

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**WARNING TO RECIPIENT OF THIS REPORT: THE CONSERVATOR'S ESTIMATES AND ANALYSIS OF AVAILABLE ASSETS, LIABILITIES, ANNUAL EXPENDITURES, ANNUAL INCOME AND PROJECTED LIFESPAN OF THE PROTECTED PERSON ARE A GOOD FAITH ESTIMATE BASED UPON THE INFORMATION THAT IS REASONABLY AVAILABLE TO THE CONSERVATOR CONCERNING THE SUBJECT PERSON. THIS INFORMATION IS PROVIDED FOR THE LIMITED PURPOSE OF ASSISTING THE COURT IN ITS OVERSIGHT OF THIS CONSERVATORSHIP. OTHER PERSONS SHOULD NOT RELY ON THIS INFORMATION BUT SHOULD REACH THEIR OWN CONCLUSIONS.**

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2. What is the Conservator's estimated of the projected remaining lifespan of the subject person?

\_\_\_\_\_ years

As required by Rule of Probate Procedure 17.4, disclose and explain whether the Conservatorship is Sustainable for the Projected Lifespan of the Protected Person, including fully disclosing any assumptions. Sustainability is defined to occur when the following equation is true:

$$\frac{(\text{«Available Assets»} - \text{«Liabilities of the Estate»})}{(\text{«Annual Expenditures»} - \text{«Annual Income»})} \geq \text{«Projected Lifespan»}$$

3. Is this Conservatorship sustainable for the projected lifespan of the subject person:

☐ True, Sustainable

☐ False, NOT Sustainable

4. If the Conservatorship is NOT sustainable, describe the Alternative Objective of the Conservatorship, since the Assets of the Conservatorship are insufficient to meet the Projected Lifespan of the Protected Person:

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**Form 5. Continued**

**CONSERVATOR'S ACKNOWLEDGEMENT**

I, the undersigned, acknowledge that I have read this Conservator's Account and Budget and, after reasonable inquiry, have a good faith belief that the information in this report is true, accurate and complete to the best of my knowledge and belief.

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<<Conservator Name>>

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<<Date>>

## **Form 5. Continued**

### **INSTRUCTIONS FOR FORM 5**

These instructions are intended to assist the conservator in meeting the obligation of filing reports with the Court. All references to “you” refer to the conservator.

Generally, each approved budget or conservator’s account covers a one year period, such that each period is referred to as a year. However, an approved budget or conservator’s account may cover a different accounting period, either longer or shorter than a year, if ordered by the Court, depending on the circumstances of each individual case. For ease of explanation, these instructions will refer to the prior report as last year, for example.

Form 5 consists of the printed form and certain required attachments, including two required schedules, specifically SCHEDULE 1: Statement of Income and Expenditures, and SCHEDULE 2: Updated Inventory and Reconciliation. It is recommended that you complete both required schedules prior to completing Form 5, because this form refers to information that is computed on the required schedules.

#### **SCHEDULE 1: Statement of Income and Expenditures**

You may be required to use all of the columns in SCHEDULE 1 or just some of the columns, depending if the report covers a new or existing conservatorship and whether the Court requires an operating budget.

Complete Column A if you filed a SCHEDULE 1 last year; this information is presented for comparison purposes only, and can be copied directly from Column C of last year’s SCHEDULE 1, including the starting and ending dates, and can be entered directly into Column A of this year’s SCHEDULE 1. If the conservatorship was in existence last year, but you were appointed during this year as a successor conservator, you are not required to use Column A.

Under certain circumstances, the Court will require you to prepare a proposed budget; and if the Court required a budget, you must report the approved budget in Column B. Please note: if the budget was amended during the year, report the final amended budget.

Complete “Column C” to report the conservator’s account for the year just ended. This is the column where the actual income and expenditure for last year is reported for the first time.

If you are required to complete Columns B and C, then you will also complete Columns D and E to show the dollar amount and percent of deviation, respectively, from the approved budget to the actual results. The calculation is shown in the header to Columns D and E.

Complete Column F if the court requires a proposed budget for the year that is just beginning. This is where you propose to the court a proposed budget for the conservatorship's income and expenditures in the coming year. If you were recently appointed as conservator and the court has directed you to file a budget, you will do this by only completing Column F.

Finally, if you are required to complete Columns C and F, then you will also complete Column G to show the dollar amount of change in income or expenditures you are proposing in the proposed budget as compared to last year's actual results. The calculation is shown in the header to Column G.

Once you have determined which columns of SCHEDULE 1 you are required to complete, please complete each row as follows:

Line 1: Enter the start date for each period. *For example, if a conservatorship files an account and proposed budget each August 15 to cover the period from July 1 to June 30, Columns B and C will have a start date July 1 of last year, Column F will have a start date of July 1 of this year, and Column A will have a start date of July 1 of two years ago.*

Line 2: Enter the end date for each period. *Using the preceding example, the end date is June 30 one year later than the start date.*

When entering information on SCHEDULE 1, transactions are recognized on SCHEDULE 1 when income is paid to the conservatorship or expenditures are paid by the conservatorship. In accounting terms, this report is prepared on a cash basis: you recognize income and expenditures when money changes hands. Additionally, do not recognize distributions from tax deferred investments, such as IRA accounts, as income; distribution of funds from one account to another is not income but simply a movement of assets between accounts.

Line 3: Enter all income that is received as a result of retirement or disability, including but not limited to Social Security, Railroad Retirement, Pension Benefits, Social Security Disability, Supplemental Security Income, and worker's compensation benefits.

Line 4: Enter all income that is received from annuities, structured settlements or trust income that is not already included in Line 3.

Line 5: Enter all earned income and wages of the protected person that is not included in Lines 3 or 4.

Line 6: Enter all investment and business income, including but not limited to interest and dividends that is not included in Lines 3, 4 or 5.

Line 7: Enter any other income that is not included in Lines 3 through 6, and attach a detailed statement explaining the other income and identifying whether it is recurring and for what duration.

Line 8: Add lines 3 through 7.

Line 9: Enter the housing, food and care expenditures on behalf of the protected person that are not included in Lines 9 through 13, including but not limited to the recurring monthly fee to a care facility, required companions or care providers, food, clothing, toiletries

**STATEWIDE FEE GUIDELINES**  
For Assessing the Reasonableness  
of  
**FIDUCIARY, GUARDIAN *AD LITEM*,  
AND ATTORNEY COMPENSATION**  
In Title 14 Proceedings

**INTRODUCTION:**

THESE GUIDELINES ARE INTENDED TO ASSIST THE COURT, FIDUCIARIES, GUARDIANS *AD LITEM*, ATTORNEYS, PARTIES, AND INTERESTED PERSONS IN EVALUATING WHETHER COMPENSATION IS REASONABLE, SINCE PROFESSIONAL SERVICES MUST BE TAILORED TO THE SPECIFIC CIRCUMSTANCES OF EACH ENGAGEMENT, AND A ONE-SIZE-FITS-ALL REGULATORY APPROACH TO PROFESSIONAL SERVICES AND COMPENSATION IS NOT PRACTICAL AND NOT IN THE BEST INTEREST OF EACH UNIQUE WARD, PROTECTED PERSON, ESTATE, AND TRUST. ALTHOUGH SUCH REGULATORY APPROACHES HAVE THE ATTRACTION OF APPARENT SIMPLICITY, THE RESULT CAN BE INCREASED ADMINISTRATIVE COSTS, DIMINISHED QUALITY OF PROFESSIONAL SERVICES, OR UNDERSERVED POPULATIONS, SUCH THAT REASONABLE COMPENSATION IS BEST DETERMINED ON A CASE-BY-CASE BASIS, WHILE APPLYING CONSISTENT COMPENSATION GUIDELINES.

SINCE EVERY CASE IS DIFFERENT, HOWEVER, AND BECAUSE EVERY FIDUCIARY, GUARDIAN *AD LITEM*, AND ATTORNEY HAS UNIQUE QUALIFICATIONS, THESE FEE GUIDELINES SET FORTH COMPULSORY BILLING STANDARDS, POINTS OF REFERENCE, AND GENERAL COMPENSATION FACTORS, BUT NOT PREDETERMINED TIMES TO PERFORM SPECIFIC TASKS, PREDETERMINED RATE SCHEDULES, OR FEES AS A PERCENT OF AN ESTATE. THEREFORE, FOLLOWING COMPLIANCE WITH COMPULSORY BILLING STANDARDS, THE COURT SHALL WEIGH THE TOTALITY OF THE CIRCUMSTANCES AND, IN ITS DISCRETION, ASSIGN MORE OR LESS WEIGHT TO ANY GIVEN POINTS OF REFERENCE OR COMPENSATION FACTORS AS IT DEEMS JUST AND REASONABLE.



## SCOPE:

THESE GUIDELINES ONLY APPLY TO THE COMPENSATION OF COURT-APPOINTED FIDUCIARIES, SPECIFICALLY GUARDIANS, CONSERVATORS, AND PERSONAL REPRESENTATIVES, LICENSED AND UNLICENSED, AS WELL AS GUARDIANS *AD LITEM* AND ATTORNEYS WHO ARE PAID BY A WARD, PROTECTED PERSON, ESTATE, OR TRUST (COLLECTIVELY REFERRED TO IN THE *GUIDELINES* AS AN “ESTATE”), BUT SHALL NOT APPLY TO COMPENSATION PAID BY A TRUST OR DECEDENT’S ESTATE, IF COMPENSATION IS SPECIFIED OR SET FORTH IN THE RELEVANT TRUST OR TESTAMENTARY INSTRUMENT. THESE FEE GUIDELINES DO NOT APPLY WHEN THE FEES ARE NOT PAID BY THE ESTATE, SUCH AS COURT-APPOINTED COUNSEL WHO ARE PAID BY THE COURT.

## GUIDELINES:

1. REASONABLE COMPENSATION. FIDUCIARIES, GUARDIANS *AD LITEM*, AND ATTORNEYS (COLLECTIVELY REFERRED TO IN THE *GUIDELINES* AS A “PROFESSIONAL”) ARE ENTITLED TO REASONABLE COMPENSATION FOR THE SERVICES THEY RENDER IN FURTHERANCE OF THE BEST INTEREST OF THE ESTATE, WHICH RESULTS IN COMPENSATION THAT IS FAIR, PROPER, JUST, MODERATE, SUITABLE UNDER THE CIRCUMSTANCES, FIT, APPROPRIATE TO THE END IN VIEW, AND TIMELY PAID, CONSISTENT WITH THE FOLLOWING GUIDELINES. THE RIGHT TO RECEIVE COMPENSATION MAY BE LIMITED BY APPLICABLE STATUTES.
2. COMPULSORY BILLING STANDARDS. UNLESS OTHERWISE ORDERED BY THE COURT, COMPENSATION AND REIMBURSEMENT SHALL MEET THE FOLLOWING STANDARDS:
  - A. ALL FEE PETITIONS SHALL COMPLY WITH RULE 33 OF THE *ARIZONA RULES OF PROBATE PROCEDURE*.
  - B. ALL HOURLY BILLING SHALL BE IN AN INCREMENT TO THE NEAREST 1/10 OF AN HOUR, WITH NO MINIMUM BILLING UNIT IN EXCESS OF 1/10 OF AN HOUR. NO “VALUE BILLING” FOR SERVICES RENDERED IS PERMITTED, RATHER THAN THE ACTUAL TIME EXPENDED.
  - C. “BLOCK BILLING” IS NOT PERMITTED; BLOCK BILLING OCCURS WHEN A TIMEKEEPER PROVIDES ONLY A TOTAL AMOUNT OF TIME SPENT WORKING ON MULTIPLE TASKS, RATHER THAN AN ITEMIZATION OF THE TIME EXPENDED ON A SPECIFIC TASK.
  - D. NECESSARY TRAVEL TIME AND WAITING TIME MAY BE BILLED AT 100% OF THE NORMAL HOURLY RATE, EXCEPT FOR TIME SPENT ON OTHER BILLABLE ACTIVITY, AND IN-STATE MILEAGE IS NOT REIMBURSED; TRAVEL

TIME AND WAITING TIME ARE NOT NECESSARY WHEN THE SERVICE CAN BE MORE EFFICIENTLY RENDERED BY CORRESPONDENCE OR ELECTRONIC COMMUNICATION, E.G. TELEPHONIC COURT HEARINGS.

- E. BILLABLE TIME THAT BENEFITS MULTIPLE CLIENTS, INCLUDING TRAVEL AND WAITING TIME, SHALL BE APPROPRIATELY APPORTIONED BETWEEN EACH CLIENT.
- F. BILLABLE TIME DOES NOT INCLUDE TIME SPENT ON BILLING OR ACCOUNTS RECEIVABLE ACTIVITIES, INCLUDING TIME SPENT PREPARING ITEMIZED STATEMENTS OF WORK PERFORMED, COPYING, OR DISTRIBUTING STATEMENTS; HOWEVER, TIME SPENT DRAFTING THE ADDITIONAL DOCUMENTS THAT ARE REQUIRED BY COURT ORDER, RULE, OR STATUTE, INCLUDING ANY RELATED HEARING, IS BILLABLE TIME. THE COURT SHALL DETERMINE THE REASONABLE COMPENSATION, IF ANY, IN ITS SOLE DISCRETION, CONCERNING ANY CONTESTED LITIGATION OVER FEES OR COSTS.
- G. BILLABLE TIME DOES NOT INCLUDE INTERNAL BUSINESS ACTIVITIES OF THE PROFESSIONAL, INCLUDING CLERICAL OR SECRETARIAL SUPPORT TO THE PROFESSIONAL.
- H. THE HOURLY RATE CHARGED FOR ANY GIVEN TASK SHALL BE AT THE AUTHORIZED RATE, COMMENSURATE WITH THE TASK PERFORMED, REGARDLESS OF WHO ACTUALLY PERFORMED THE WORK, BUT CLERICAL AND SECRETARIAL ACTIVITIES ARE NOT SEPARATELY BILLABLE FROM THE PROFESSIONAL.

*EXAMPLE: AN ATTORNEY CAN ONLY BILL AN ATTORNEY RATE WHEN PERFORMING SERVICES THAT REQUIRE AN ATTORNEY, BUT A PARALEGAL RATE WHEN PERFORMING PARALEGAL SERVICES, A FIDUCIARY RATE WHEN PERFORMING FIDUCIARY SERVICES, NO CHARGE WHEN PERFORMING SECRETARIAL OR CLERICAL SERVICES, ETC.*

*EXAMPLE: A FIDUCIARY CAN ONLY BILL A FIDUCIARY RATE WHEN PERFORMING SERVICES THAT REQUIRE THE SKILL LEVEL OF THE FIDUCIARY, BUT A COMPANION RATE WHEN PERFORMING COMPANION SERVICES, A BOOKKEEPER RATE WHEN PERFORMING BOOKKEEPING AND BILL-PAYING SERVICES FOR A CLIENT, NO CHARGE WHEN PERFORMING SECRETARIAL OR CLERICAL SERVICES, ETC.*

- I. REASONABLE COSTS THAT ARE INCURRED IN FURTHERANCE OF THE BEST INTEREST OF THE ESTATE ARE REIMBURSABLE AT ACTUAL COST, WITHOUT "MARK-UP". EXAMPLES OF REIMBURSABLE COSTS INCLUDE, BUT ARE NOT LIMITED TO: GOODS OR SERVICES OBTAINED FOR OR

CONSUMED BY THE ESTATE; POSTAGE AND SHIPPING FEES; DEPOSITION AND TRANSCRIPT COSTS; FEES CHARGED BY A PROCESS SERVER; PUBLICATION FEES; EXPERT WITNESS FEES; MESSENGER COSTS; CASE-SPECIFIC BONDS; AND ELECTRONIC DATABASE FEES CHARGED BY AN OUTSIDE VENDOR (E.G., WESTLAW, LEXISNEXIS, PACER, ETC.) EXCEPT FOR CHARGES TO RESEARCH ARIZONA STATUTES, CASE LAW, AND REGULATIONS. REIMBURSABLE COSTS DO NOT INCLUDE ANY COST NOT SPECIFICALLY OR DIRECTLY ASSOCIATED WITH THE DELIVERY OF GOODS OR SERVICES TO AN IDENTIFIED ESTATE, I.E. OVERHEAD.

- J. TIME AND EXPENSES FOR ANY MISFEASANCE OR MALFEASANCE ARE NOT COMPENSABLE.
  - K. TIME AND EXPENSES TO CORRECT OR MITIGATE ERRORS CAUSED BY THE PROFESSIONAL, OR THEIR STAFF, ARE NOT BILLABLE TO THE ESTATE.
  - L. TIME OR EXPENSES TO RESPOND OR DEFEND AGAINST A REGULATORY COMPLAINT AGAINST THE PROFESSIONAL ARE NOT BILLABLE TO THE ESTATE.
  - M. A PROFESSIONAL MAY ONLY CHARGE INTEREST ON THEIR UNPAID COMPENSATION OR UNPAID REIMBURSEMENT WITH COURT APPROVAL.
3. POINTS OF REFERENCE. THE COURT SHALL CONSIDER POINTS OF REFERENCE WHEN CONSIDERING HOURLY RATES AND CHARGES, AS NON-BINDING BUT INFORMATIVE AND PERSUASIVE CONSIDERATIONS, INCLUDING:
- A. THE PREVAILING AVERAGE AND MEDIAN RATES CHARGED FOR COMPARABLE PROFESSIONAL SERVICES IN THE MARKETPLACE IN WHICH THE PROFESSIONAL PRACTICES, AS PERIODICALLY REPORTED BY THE ADMINISTRATIVE OFFICE OF THE COURTS. SEE EXHIBIT A.
  - B. TO THE EXTENT AUTHORIZED BY LAW, A NON-LICENSED FIDUCIARY WHO IS RELATED TO A PROTECTED PERSON, WARD, OR DECEDENT, MAY RECEIVE REASONABLE COMPENSATION FOR SERVICES AS A CONSERVATOR, GUARDIAN, OR PERSONAL REPRESENTATIVE, RESPECTIVELY, COMMENSURATE WITH THE SERVICES PERFORMED.
  - C. THE NUMBER OF BILLABLE HOURS AND SERVICES RENDERED IN COMPARABLE CASES BEFORE THAT JUDICIAL OFFICER.
  - D. AS ONLY A GENERAL BENCHMARK, THE COMMON FIDUCIARY SERVICES RENDERED IN A ROUTINE GUARDIANSHIP OR CONSERVATORSHIP ENGAGEMENT ARE AS FOLLOWS (THE FIDUCIARY SHOULD BE PREPARED

TO PROVIDE A REASONABLE EXPLANATION FOR EXCEEDING THESE BENCHMARKS, UPON REQUEST BY THE COURT):

- I. ROUTINE BOOKKEEPING, SUCH AS DISBURSEMENTS, BANK RECONCILIATION, DATA ENTRY OF INCOME AND EXPENDITURES, AND MAIL PROCESSING: FOUR (4) HOURS PER MONTH, AT A COMMENSURATE RATE FOR SUCH SERVICES.
  - II. ROUTINE SHOPPING: SIX (6) HOURS PER MONTH IF WARD IS AT HOME, AND TWO (2) HOUR PER MONTH IF WARD IN A FACILITY, AT A COMMENSURATE RATE FOR SUCH SERVICES.
  - III. ONE ROUTINE PERSONAL VISIT PER MONTH BY THE FIDUCIARY TO THE WARD OR PROTECTED PERSON.
  - IV. PREPARATION OF CONSERVATOR'S ACCOUNT AND BUDGET: FIVE (5) HOURS PER YEAR.
  - V. PREPARATION OF ANNUAL GUARDIANSHIP REPORT: TWO (2) HOURS PER YEAR.
  - VI. MARSHALLING OF ASSETS AND PREPARATION OF INITIAL INVENTORY: EIGHTY (80) HOURS.
- E. NOT MORE THAN ONE ATTORNEY MAY BILL FOR ATTENDING HEARINGS, DEPOSITIONS, AND OTHER COURT PROCEEDINGS ON BEHALF OF A CLIENT, NOR BILL FOR STAFF TO ATTEND, ABSENT GOOD CAUSE.
- F. EACH FIDUCIARY AND GUARDIAN *AD LITEM* SHALL NOT BILL FOR MORE THAN ONE PERSON TO ATTEND HEARINGS, DEPOSITIONS, AND OTHER COURT PROCEEDINGS ON BEHALF OF AN ESTATE, ABSENT GOOD CAUSE. THIS PROVISION DOES NOT PRECLUDE AN ATTORNEY, WHO REPRESENTS A FIDUCIARY OR GUARDIAN AD LITEM, FROM SUBMITTING A SEPARATE BILL.
- G. THE TOTAL AMOUNT OF ALL ANNUAL EXPENDITURES, INCLUDING REASONABLE PROFESSIONALS FEES, MAY NOT DEplete THE ESTATE DURING THE ANTICIPATED LIFESPAN OF THE WARD OR PROTECTED PERSON, UNTIL AND UNLESS THE CONSERVATOR HAS DISCLOSED THAT THE CONSERVATORSHIP HAS AN ALTERNATIVE OBJECTIVE, SUCH AS PLANNED TRANSITION TO PUBLIC ASSISTANCE OR ASSET RECOVERY, AS SET FORTH IN THE DISCLOSURE REQUIRED BY RULE OF PROBATE PROCEDURE 17.4.

4. COMPENSATION FACTORS. THE COURT SHALL CONSIDER THE FOLLOWING FACTORS, AS GENERAL PRINCIPLES, NOT RIGID RULES, WHEN DETERMINING WHAT CONSTITUTES REASONABLE COMPENSATION:
- A. THE REQUEST FOR COMPENSATION IN COMPARISON TO THE PREVIOUSLY DISCLOSED BASIS FOR FEES, ANY PRIOR ESTIMATE BY THE PROFESSIONAL, AND ANY COURT ORDER; [REFINE AFTER LEGISLATION IS ADOPTED]
  - B. THE EXPERTISE, TRAINING, EDUCATION, EXPERIENCE, AND SKILL OF THE PROFESSIONAL IN TITLE 14 PROCEEDINGS;
  - C. WHETHER AN APPOINTMENT IN A PARTICULAR MATTER PRECLUDED OTHER EMPLOYMENT;
  - D. THE CHARACTER OF THE WORK TO BE DONE, INCLUDING DIFFICULTY, INTRICACY, IMPORTANCE, NECESSITY, TIME, SKILL OR LICENSE REQUIRED, OR RESPONSIBILITY UNDERTAKEN;
  - E. THE CONDITIONS OR CIRCUMSTANCES OF THE WORK, INCLUDING EMERGENCY MATTERS (REQUIRING URGENT ATTENTION), SERVICES PROVIDED OUTSIDE REGULAR BUSINESS HOURS, POTENTIAL DANGER (E.G., HAZARDOUS MATERIALS, CONTAMINATED REAL PROPERTY, OR DANGEROUS PERSONS), OR OTHER EXTRAORDINARY CONDITIONS;
  - F. THE WORK ACTUALLY PERFORMED, INCLUDING THE TIME ACTUALLY EXPENDED, AND THE ATTENTION AND SKILL-LEVEL REQUIRED FOR EACH TASK, INCLUDING WHETHER A DIFFERENT PERSON COULD HAVE RENDERED BETTER, FASTER OR LESS EXPENSIVE SERVICE;
  - G. THE RESULT, SPECIFICALLY WHETHER BENEFITS WERE DERIVED FROM THE EFFORTS, AND WHETHER PROBABLE BENEFITS EXCEEDED COSTS;
  - H. WHETHER THE PROFESSIONAL TIMELY DISCLOSED THAT A PROJECTED COST WAS LIKELY TO EXCEED THE PROBABLE BENEFIT, AFFORDING THE COURT AN OPPORTUNITY TO MODIFY ITS ORDER IN FURTHERANCE OF THE BEST INTEREST OF THE ESTATE.
  - I. THE FEES CUSTOMARILY CHARGED AND TIME CUSTOMARILY EXPENDED FOR PERFORMING LIKE SERVICES IN THE COMMUNITY;
  - J. THE DEGREE OF FINANCIAL OR PROFESSIONAL RISK AND RESPONSIBILITY ASSUMED;
  - K. THE FIDELITY AND LOYALTY DISPLAYED BY THE PROFESSIONAL, INCLUDING WHETHER THE PROFESSIONAL PUT THE BEST INTEREST OF

THE ESTATE BEFORE THE ECONOMIC INTEREST OF THE PROFESSIONAL;  
AND,

L. THE "POINTS OF REFERENCE", AS SET FORTH ABOVE.

5. NON-TRADITIONAL COMPENSATION ARRANGEMENTS.

- A. FLAT-FEE: UNLESS OTHERWISE PROHIBITED BY LAW OR RULE, FLAT-FEE COMPENSATION IS PERMISSIBLE, AND MAY INCLUDE ALL OR PART OF AN ENGAGEMENT, IF THE PREDICTABILITY OF COSTS IS ENHANCED AND IF THE ECONOMIC INTERESTS OF THE PROFESSIONAL ARE THEREBY BETTER ALIGNED WITH THE ESTATE.

THE BASIS FOR ANY FLAT FEE COMPENSATION SHALL BE DISCLOSED IN ADVANCE, IN WRITING, SPECIFYING IN DETAIL THE SERVICES INCLUDED IN ANY FLAT-FEE, THE UNITS OF EACH SERVICE, AND THE USUAL HOURLY RATE FOR SUCH SERVICES. THE ACTUAL DELIVERY OF SERVICES INCLUDED WITH THE FLAT FEE SHALL BE DOCUMENTED.

- B. CONTINGENT FEE: UNLESS OTHERWISE PROHIBITED BY LAW OR RULE, NOTHING IN THESE GUIDELINES SHALL PROHIBIT A CONTINGENT FEE ENGAGEMENT WITH AN ATTORNEY, PROPERLY EXECUTED IN WRITING, E.G. REPRESENTATION ON A PERSONAL INJURY CLAIM.

## EXHIBIT A FOR 2011

STATEWIDE FEE GUIDELINES FOR ASSESSING THE REASONABLENESS OF FIDUCIARY, GUARDIAN AD  
*LITEM*,  
AND ATTORNEY COMPENSATION IN TITLE 14 PROCEEDINGS

***This Exhibit shall be periodically updated by the Administrative Office of the Courts, and an updated Exhibit A may be downloaded at [www.azcourts.az.gov/...](http://www.azcourts.az.gov/...)***

	Hourly Professional Compensation Range			
	Minimum	Median	Average	Maximum
Attorney				
Licensed Fiduciary				
Guardian <i>ad Litem</i>				

PLEASE NOTE: THE HOURLY RATES REPORTED IN EXHIBIT A ARE COMPILED BY THE ADMINISTRATIVE OFFICE OF THE COURTS AS A POINT OF REFERENCE ON ESTIMATED CURRENT MARKET RATES AMONG PROFESSIONALS BASED UPON CURRENTLY AVAILABLE INFORMATION. THESE RATES ARE NON-BINDING ON THE PARTIES, PROFESSIONALS OR THE COURT, BUT ARE INFORMATIVE AND PERSUASIVE AS AN INITIAL POINT OF REFERENCE IN DETERMINING REASONABLE COMPENSATION. ACTUAL COMPENSATION RATES WILL VARY BASED UPON OTHER FACTORS INCLUDING THE EXPERIENCE OF THE PROFESSIONAL, GEOGRAPHIC AREA OF SERVICE, AND RESOURCES OF THE FIRM.